

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9520 of 1995

with

CIVIL APPLICATION No 4525 of 1996

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE MR. K.SREEDHARAN

and MR.JUSTICE N.N.MATHUR

and MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1-2 Yes Nos. 3 to 5 - No

PARSHOTTAMBHAI G CHAVDA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9520 of 1995
MR MINESH C DAVE for Petitioners
MR S.N. SHELAT, ADDL. ADVOCATE GENERAL WITH
MR. DA BAMBHANIA for Respondent No. 1
MR SV RAJU for Respondent No. 3
MR PJ YAGNIK for Respondent No. 4, 5
2. Civil Application No 4525 of 1996
MR MINESH C DAVE for Petitioners

MR S.N. SHELAT, ADDL. ADVOCATE GENERAL WITH

MR. DA BAMBHANIA for Respondent No. 1

MR SV RAJU for Respondent No. 3

MR PJ YAGNIK for Respondent No. 4, 5

CORAM : THE CHIEF JUSTICE MR. K.SREEDHARAN and

MR.JUSTICE N.N.MATHUR and

MR.JUSTICE A.R.DAVE

Date of decision:30/03/98

JUDGEMENT (per MATHUR, J)

The short and significant question arises for consideration is:

"Whether the Collector has power, authority or jurisdiction under Section 258 of the Gujarat Municipalities Act, 1963, to suspend a Resolution passed by the Municipality which has been executed or implemented?"

2. A Division Bench of this court in H.H. Parmar Vs. Collector, Rajkot reported in (1979) 20(2) G.L.R. 97 interpreted Section 258(1) of the Gujarat Municipalities Act, 1963 (hereinafter referred to as 'the Gujarat Act') in juxtaposition of Section 34(1-B) of the U.P. Act relying on the decision of apex court in Municipal Board Kannauj Vs. State of U.P. reported in 1971 SC 2147 holding that if a resolution has been fully executed it cannot be suspended by the Collector because there is nothing in it which could be suspended. Learned single judge (Coram: C.K. Thakkar, J) while considering interim relief in Special Civil Application under reference felt that the decision of the Division Bench of this court in Parmar's case (supra) requires reconsideration for the reasons stated in order of reference.

3. To appreciate the controversy raised it would be appropriate to notice few relevant facts. The petitioner No. 1 was appointed as Mistry in the year 1983 by the respondent No. 3 Limbdi Municipality. He was transferred as Bus clerk in December, 1994. He was placed as In-Charge Octroi Inspector and by Resolution No. 176 dated 13.12.1994 he was appointed as Octroi Inspector on permanent basis with retrospective effect from 10.12.1994. Similarly, petitioner No. 2 was appointed as Electric Motor Pump Driver in 1984. He was transferred as In-Charge Water Works Supervisor and by Resolution No. 176, he was appointed as Water Works Supervisor on permanent basis. The Resolution was set

aside by the impugned order dated 3.5.1995 passed by the Collector, Surendranagar. The said order has been confirmed by the order of the State Government dated 22.9.1995. Both the orders have been challenged on the ground that the impugned orders are illegal, as Section 258 does not empower the Collector to suspend a executed resolution.

4. The Division Bench of this court in Parmar's case (supra) has interpreted Section 258(1) of the Act of 1963 in juxtaposition of Section 34(1-B) of the U.P. Act. Thus it would be necessary to acquaint with the said provisions. For ready reference both the provisions are quoted hereinbelow:-

"Section 34(1-B) of the U.P. Act -	Section 258(1) of the Gujarat Act.
<p>The State Government may If, in the opinion of of its own motion or on the Collector, the exe- report or complaint received cution of any order or by order prohibit the exe- resolution of a municipi- cution or further execu- pality, or the doing of of a resolution or order anything which is about passed or made under this to be done or is being or any other enactment done by or on behalf of a by a board or a committee municipality, is causing of a board or a joint commi- or is likely to cause ttee, or any officer or injury or annoyance to servant of a board or of a the public or to lead a joint committee if in its breach of the peace or is opinion such resolution or unlawful, he may by order order is prejudicial to the in writing under his sig- public interest and may nature suspend the execu- prohibit the doing or tion or prohibit the continuance by any person doing thereof and where of any act in pursuance of the execution of any work or under cover of such in pursuance of the order resolution or order. or resolution of the municipality is already commenced or completed direct the municipality to restore the position in which it was before the commencement of the work.</p>	

(2) When the Collector
makes any order under
this Section he shall
forthwith forward to the
municipality affected

thereby a copy of the order with a statement of the reasons for making it and also submit a report to State Government along with copies of such order and statement.

(3) Against the order made by the Collector under sub-section (1) the municipality may prefer an appeal to the State Government within (thirty days) from the date on which it receives a copy of the order. The State government may on such appeal being preferred rescind the order or may revise or modify or confirm the order direct that the order shall continue to be in force, with or without modification, permanently or for such period as it may specify;

Provided that the order shall not be revised, modified or confirmed by the State Government without giving the municipality reasonable opportunity of showing cause against the order.

5. Reading of Section 34(1-B) of the U.P. Act shows that the State Government is empowered to prohibit the execution or further execution of the Resolution or order or doing or continuance of any person of any act in pursuance of or under cover of such Resolution or order. It does not provide for a situation for intervention by directing restoration of earlier position after the work is over.

6. The analysis of Section 258 would resolve that:-

If in the opinion of the Collector

- (i) the execution of any order of the municipality or;
- (ii) the execution of the Resolution of the municipality or;
- (iii) doing of anything which is about to be done by the municipality or;
- (iv) doing of anything which is being done by the municipality ;
 - (a) is causing or;
 - (b) likely to cause injury or annoyance to the public or;
 - (c) is likely to lead breach of peace or;
 - (d) is unlawful

the Collector may take any of the following actions:

- (A) He may suspend the order or Resolution
- (B) prohibit doing of anything which is about to be done or being done
- (C) If the work is already commenced or completed he may direct the municipality to restore the position which was there before the commencement of their doing (emphasis supplied)

7. Thus, Section 258(1) to a larger extent deals with arresting or stoppage of some work which is in process of being done. The suspension or prohibition presupposes obviously that something remains to be done which requires to be arrested before it reaches to its culmination. The last part pointed out in para (C) however deals with a situation where thing is completed before the Collector can intervene or arrest, its doing or progress. He in such a completed matter is competent to direct the restoration of the position ante. Thus, section 258 of the Gujarat Municipalities Act provides for both the situations, namely when the action is not taken or is incomplete and when the action is already taken and is over. In case of U.P. Act an order of prohibition can be issued by the State Government

preventing the municipality from taking that act or for completing it while in case of Gujarat Act, when the action is over, complete, or the work is executed the Collector has a power to direct restoration of the position ante. Thus, the power under Section 258(1) of the Gujarat Act is wide covering both the situations. An appropriate action can be taken by the Collector either by preventing the municipality from acting or doing the act and also by ordering restoration.

8. In KANNAUJ MUNICIPAL BOARD's case (supra) an Executive Officer of the Municipal Board dismissed 74 sweepers on 9.4.1964. The dismissal was not in accordance with the provisions of Rule 5 of the Uttar Pradesh Municipal Karamchari (Janch, Dand Tatha Seva Sampati) Niyamawali inasmuch as the procedure prescribed under the Rules was not followed and the action was taken without affording an opportunity of being heard to the employees and without getting opinion from the State Government. The Governor of Uttar Pradesh, therefore, in exercise of powers under Section 34(1-B) prohibited the execution of the order dated 9.4.1964. That order was passed by the Governor on 12.5.1965. The validity of that order was challenged by the Municipality by filing petition in the High Court of Allahabad. The High Court, however, dismissed the petition. On appeal by the Municipality the apex court held that the Resolution of the Board having been exhausted the State Government could hardly 'prohibit the execution or further execution' of the Resolution. The Supreme Court observed thus:-

"....The resolution of the Board or the order of a duly authorised officer of the Board is not liable to be cancelled or set aside under this Section. All that could be done under it is to prohibit the execution or further execution of the resolution or order, or the doing or continuance by any person of any act in pursuance of or under cover of such resolution or order where the resolution or order does not require any acts to be performed or steps to be taken for the execution or further execution of the resolution or order of the Board or of its Officer, as in the present case, there is really nothing to prohibit. It was contended on behalf of the State that, when the State Government was empowered to order prohibition of the execution of the resolution or order, it was virtually empowered to set aside or cancel the order and in support of this view, a reference was made to

sub-section (4) of that section which provides that it shall be the duty of the Board, if so required by the authority making the order under sub-section (1-B) to take any action which it would have been entitled to take. If the resolution or order had never been made or passed, and which is necessary for preventing any person from doing or continuing to do anything in pursuance of the resolution or order. If the object of the provision was to clothe the State Government with the power to cancel or set aside the resolution of the Board or order, it would have simply said so without resorting to the circumlocution 'prohibit the execution or further execution of the resolution or order'. We do not, therefore, think that sub-section (1-B) read with sub-section (4) applies to any resolution or order which exhausts itself after it is passed or made....."

9. It is significant to notice that Supreme Court did not read the provisions of sub-Section (4) of Section 34 of U.P. Act as enabling the Government to cancel or set aside the resolution or order passed by the Board observing that if the object of the provision was to clothe the State Government with the power to cancel or set aside the resolution of Board or order it would have simply said so without resorting to the circumlocution "prohibit the execution or further execution of the resolution or order". But so far as the Gujarat Act is concerned, last para of sub-section (1) of Section 258 specifically and unequivocally clothes the Collector with the power of restoration by directing the municipality "to restore the position in which it was before the commencement of the work". Therefore the ratio laid down by the Supreme Court in KANNAUJ MUNICIPAL's case (supra) instead of supporting the view expressed by the Division Bench supports the interpretation put forward by the learned counsel supporting the reference. With respect, the judges of the Division Bench committed error in considering that the material part of sub-Section (1) of Section 258 of the Gujarat Act is similar to material part of sub-Section (1-B) of Section 34 of the U.P. Act.

10. In fact a contention was raised before the Division Bench in H.H. Parmar's case that Section 34(1-B) of the Act does not contain the provision like sub-section (1) of Section 258 of Gujarat Act which empowers the Collector to direct the municipality to restore the position in which it was before the

commencement of the work. A categorical attention was invited to the expression:

"and where the execution of any work in pursuance of the order or resolution of the municipality is already commenced or completed, direct the municipality to restore the position in which it was before the commencement of the work".

However, the learned judges of the Division Bench negatived the arguments by observing that the word 'work' refers to public works and it has something to do with construction of building, bridge, road or digging the soil such as for the purpose of laying drainage. The work does not command such a wide amplitude as to embrace within its sweep all actions and orders taken in execution of the order. In the opinion of the Division Bench the expression 'commenced or completed' is more in harmony with the word 'work' meaning a public work and was not in harmony with the word 'action' meaning any action taken under an unlawful resolution.

11. With respect, the interpretation put-forward by the Division Bench is not in consonance with the scheme of the Act. Section 258 is in Chapter XVI. This Chapter deals with 'control' over the municipalities. The Legislature has conferred certain powers on the Collectors and Directors and on the State Government. When actions are taken by the municipalities it is the power and duty of the statutory authorities and the officers to supervise and control such actions. They can scrutinise such actions and works and decide their legality. In our view, in light of Chapter XVI (Control) one has to construe the expression 'work'. Moreover, for buildings and construction work, there is a different chapter. Chapter XI deals with power to regulate buildings in connection with drainage, water supply, external structures, public health, safety and convenience, prevention of nuisance etc. So combined reading of both the Chapters, namely, Chapters XI and XVI make it clear that for matters relating to construction of work necessary provisions have been made in Chapter XI, whereas for matters relating to control over municipalities, one has to refer Chapter XVI. When the expression 'work' used in sub-section (1) of Section 258 is considered, interpretation of that expression must be made keeping in mind the provisions of Chapter XVI and not the provisions of Chapter XI. The Division Bench, therefore, *prima facie* was not right in importing the concept of 'construction work' of Chapter XI while interpreting Section 258 in Chapter XVI.

12. Again, the term 'work' is not limited to 'public work' or 'construction work', as observed by the Division Bench. The Dictionary meaning of the term 'work' is very wide. For instance, in Webster's New Twentieth Century Dictionary, Second Edition, Volume II, at page 2107, the term is defined thus:-

"work. (n)

1. Bodily or mental effort exerted to do or make something, purposeful activity, labor, toil.
2. Employment, as, out of work.
3. Occupation, business, trade, craft, profession, as, his work is selling.
4. (a) something one is making, doing, or acting upon, especially as one's occupation or duty, a task, an undertaking, as, he laid out his work,
(b) the amount of this, as, day's work.
5. Something that has been made or done, result of effort or activity, specifically, (a) (usually pl.) an act, a deed, as, a person of good works, (b) (pl.) collected writings, as the works of Whitman; (c) (pl.) engineering structures, as bridges, dams, docks, etc.
(d) a fortification, (e) needlework, embroidery; (f) a work of art.
6. material that is being or is to be processed, as in a machine tool, in some stage of manufacture.
7. (pl) (constructed as sing) a place where work is done, as a factory, public utility plant etc.
8. (pl.) the working parts of a watch, etc. mechanism.
9. manner, style, quality, rate etc. of working, workmanship.
10. foam due to fermentation, as in cider.
11. in mechanics, transference of force from

one body or system to another, measures by the product of the force and the amount if displacement in the line of force.

12. (pl.) in theology, moral acts, distinguished from faith

at work, working

external work, in physics, work done against external forces as a result of heat imparted, as that resulting from the expansion of a body or from its diminution in volume.

internal work, in physics, work resulting from the introduction of heat among the molecules of a body, as in a change in condition or an increase in temperature.

mascular work; in physiology, work performed in the contraction of a muscle,

out of work, not having any remunerative employment, unemployed.

to get the works, to be the victim of extreme measures (Slang)

to give one the works; (a) to murder one, (b) to subject to one to an ordeal, either maliciously or jokingly (Slang)

to make short (or quick) work of, to do or dispose of quickly.

to shoot the works, (a) to risk everything on one change or play (b) to make a supreme effort or attempt (Slang).

Syn. - labor, toil, drudgery, employment, occupation, action, performance, feat, achievement...."

(See: also the Compact Edition of the Oxford English Dictionary, Volume II).

In our opinion, the expression 'work' used in Section 258 has no nexus with 'construction work' and it must be interpreted to mean exercise of powers, performance of functions and discharge of duties by municipalities and supervision or control by Collector,

Director of Municipalities and the State Government.

13. Dealing with the similar provision contained under Section 421 of the M.P. Municipalities Corporation Act, 1953, the apex court in LIFE INSURANCE CORPORATION OF INDIA VS. VISHWANATH VERMA & ORS. reported in JT 1994 (6) SC 379 held that if the act of the Municipality is not in conformity with law, the doing of such act could be prohibited. In the said case the Jabalpur Municipal Corporation formulated a scheme for the benefits of its employees known as Nagar Nigam Karamchari Parivarik Kalyan Yojna. While the scheme was in operation a question arose as to the validity of the scheme. The Government of Madhya Pradesh examined the question from the perspective whether the said scheme was in violation of provision of Life Insurance Corporation Act, 1956 or the Insurance Act, 1938. By order dated 16.12.1980 the Government of Madhya Pradesh directed the Jabalpur Municipal Corporation to stop the scheme forthwith. The said order was challenged by an employee of the Municipal Corporation, Jabalpur. The Division Bench of the Madhya Pradesh High Court quashed the order on the ground that the State Government has no jurisdiction to suspend or cancel the scheme which does not fall within the ambit of the Section 421 of the Madhya Pradesh Municipal Corporation Act, 1956. For ready reference sub-section (1) of Section 421 of the Madhya Pradesh Municipal Corporation Act, 1956 is extracted as follows:-

‘Power of Government to suspend any resolution or order - (1) If, the Government is of opinion that the execution of any resolution or order of the Corporation or of any other authority or officer subordinate thereto or the doing of an act which is about to be done or is being done by or on behalf of the Corporation is not in conformity with law or with the rules or bye-laws made thereunder, or is likely to lead to a breach of the peace or to cause injury or annoyance to public or to any class or body of persons or is likely to cause waste of or damage to Municipal funds, the Government may, by order in writing, suspend the execution of such resolution or order or prohibit the doing of any such act.’

Considering the provisions of Section 421 of the Act, the apex court found that if doing an act which is not in conformity with law, it could prohibit the doing of such an act. Therefore, if an act is found to be illegal, not in accordance with law, doing of such an act can be

prohibited. The Supreme Court in para 25 held thus:

"A careful reading of sub-section (1) of Section 421 shows that if the doing an act which is not in conformity with law, certainly it could prohibit the doing of such an act. We have already found that the scheme, is in violation of the Life Insurance Corporation Act, particularly Section 30. Therefore, the State Government is well empowered to invoke the power under Section 421. The exercise of such a power cannot be found fault with.

Thus, applying the ratio laid down in the Life Insurance Corporation's case (supra) as well, even in absence of the last para of 258(1) empowering the Collector to restore the position ante the Collector has power to suspend doing an act which is not in conformity with law.

It is useful to refer Francis Bennion on 'Statutory Interpretation' Second Edition. "Functional Construction Rule" has been dealt with in part XV of his book. The nature of purposive construction is dealt with in Part XX at page 659 thus:-

"A purposive construction of an enactment is one which gives effect to the legislative purpose by

(a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this Code called a purposive-and-literal construction), or

(b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the Code called a purposive-and-strained construction)"

At page 661 of the same book, the author has considered the topic of Purposive Construction in contrast with literal construction. The learned author has observed as under:

"Contrast with literal construction

Although the term 'purposive construction' is not new; its entry into fashion betokens a swing by

the appellate courts away from literal construction. Lord Diplock said in 1975; 'If one looks back to the actual decisions of the [House of Lords] on questions of statutory construction over the last 30 years one cannot fail to be struck by the evidence of a trend away from the purely literal towards the purposive construction of statutory provisions'. The matter was summed up by Lord Diplock in this way -

'... I am not reluctant to adopt a purpose construction where to apply the literal meaning of the legislative language used would lead to results which would clearly defeat the purpose of the Act. But in doing so the task on which a court of justice is engaged remains one of construction, even where this involves reading into the Act words which are not expressly included in it".

14. Following the aforesaid rule of construction, we must interpret section 258(1) in a way that it does not lead to injustice or it perpetuates injustice. If it is held that the Collector has no power or authority or jurisdiction to interfere even if the action is wrong then this will amount to perpetuating injustice. Further the interpretation given by the Division Bench may result in discriminatory and arbitrary exercise of power. The learned single judge has made the point by giving an illustration. A and B have been promoted by the municipality by a common resolution and/or order. Both of them were asked to take over charge of their promotional post on a particular day. One is available and immediately takes over charge of his new assignment. The other is either on leave or is sick or is sent by the municipality for some official work at some place. Because of the reasons beyond his control or because of the work of municipality he is unable to take charge of the office. Meanwhile the Collector comes to know about the resolution being passed by the municipality. In his opinion the resolution is contrary to law and therefore he intends to take action under Section 258 of the Act. As per the interpretation of Section 258(1) as given by the Division Bench the action of the Collector to suspend the resolution with respect to the second person would be legal but in respect of the first one who has already taken over charge and thereby the resolution of the municipality has been executed, the order of the Collector shall be bad. To say the least, such interpretation would defeat the justice in absence of any compelling reasons, a court of law will not adopt such an

interpretation. Thus, we hold that section 258(1) of the Gujarat Act empowers the Collector to suspend a resolution which is not in conformity with the law and direct the restoration of position ante. In view of this, impugned order of the Collector dated 3.5.1995 and the order of the State Government dated 22.9.1995 do not suffer from any infirmity.

15. Consequently, the Special Civil Application fails and is dismissed. Rule discharged. Interim relief vacated. No order as to costs.

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